

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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|------------|---|------------------------|
| NIKE, INC. | X | |
| | : | |
| | : | |
| Plaintiff, | : | Case No. 1:23-cv-00660 |
| | : | |
| -against- | : | |
| | : | |
| USAPE LLC | : | |
| | : | |
| Defendant. | : | |
| | X | |

**DEFENDANT’S OBJECTION TO PLAINTIFF’S RESPONSE (ECF NO. 31) TO
DEFENDANT’S NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant USAPE LLC (“BAPE”) respectfully objects to Plaintiff Nike, Inc.’s (“Nike”) Response to BAPE’s Notice of Supplemental Authority (filed at ECF No. 31) (the “Response”) insofar as it contains legal arguments attempting to distinguish the cases properly brought before this Court by BAPE. In effect, Nike is taking this as an opportunity to improperly re-argue the merits of the fully-briefed Motion to Dismiss. As this Court has previously noted, this is an impermissible use of a Notice of Supplemental Authority. *See* Order dated August 17, 2017, *Fullwood v. Wolfgang’s Steakhouse, Inc.*, S.D.N.Y. Case No. 13-cv-7174, ECF No. 88 (striking legal arguments in notice of supplemental authority on issue of Article III standing because the notice amounts to “an impermissible sur-reply brief”), attached as **Exhibit A**. “Put simply, notices of supplemental authority should not make legal argument.” *Minus v. Miami-Dade Cty.*, No. 19-cv-25113, 2021 U.S. Dist. LEXIS 57469, at *1-2 (S.D. Fla. Mar. 25, 2021) (quoting *Girard v. Aztec RV Resort, Inc.*, No. 10-62298-CIV, 2011 U.S. Dist. LEXIS 105855, at *2 (S.D. Fla. Sept. 16, 2011)).ⁱ If a Notice of Supplemental Authority must be devoid of legal argument, surely Nike

should not be permitted to argue the law in a Response to Bape's Notice of Supplemental Authority and the Court should, therefore, strike that Response.

Dated: January 18, 2024

COWAN, LIEBOWITZ & LATMAN, P.C.

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ⁱ For these reasons, BAPE refrained from submitting a response to Nike's own Notice of Subsequent Authority (ECF No. 29).